IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

LEGGETT & PLATT, INC. *Petitioner*, v. NATIONAL LABOR RELATIONS BOARD, *Respondent*.	Case No. 19-1003, consolidated with Case No. 19-1005

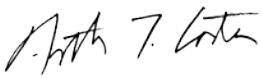
UNDERLYING DECISION FROM WHICH THE PETITION ARISES

Petitioner Leggett & Platt, Inc. has attached hereto as Exhibit A a copy of the underlying Decision and Order of Respondent National Labor Relations Board from which its Petition for Review arises.

Dated: February 8, 2019

Respectfully submitted,

LITTLER MENDELSON, P.C.
Attorneys for Petitioner



By:_____

Arthur T. Carter
Texas Bar No. 00792936
Arrissa K. Meyer
Texas Bar No. 24060954
2001 Ross Ave., Suite 1500
Dallas, Texas 75201
T: (214)880-8105
F: (214)594-8601
atcarter@littler.com
akmeyer@littler.com

A. John Harper III
Texas Bar No. 24032392
1301 McKinney St., Suite 1900
Houston, Texas 77010
T: (713) 652-4750
F: (713) 513-5978
ajharper@littler.com

CERTIFICATE OF SERVICE

Pursuant to Federal Rules of Appellate Procedure 15(c) and 25(b), I hereby certify that true and correct copies of the foregoing document were served via (1) U.S. Mail and (2) the Court's CM/ECF system on this 8th day of February, 2019 upon:

David Habenstreit
Elizabeth Heaney
Barbara Sheehy
Counsel for Respondent
National Labor Relations Board
1015 Half Street, SE
Washington, D.C., 20570
appellatecourt@nlrb.gov
elizabeth.heaney@nlrb.gov
barbara.sheehy@nlrb.gov

William Haller
Counsel for the Union, International Association of Machinist & Aerospace Workers, AFL-CIO (IAM)
9000 Machinists Place
Upper Marlboro, MD 20772-2687
whaller@iamaw.org

Aaron B. Solem
Counsel for Petitioner Keith Purvis
National Right to Work Legal Defense and Education Foundation
8001 Braddock Road
Suite 600
Springfield, VA 22160-8001
abs@nrtw.org

Dated: February 8, 2019

Respectfully submitted,

LITTLER MENDELSON, P.C.
Attorneys for Petitioner

By:_____

Arthur T. Carter
2001 Ross Ave., Suite 1500
Dallas, Texas 75201
T: (214)880-8105
F: (214)594-8601
atcarter@littler.com

FIRMWIDE:162286889.1 076785.1017

EXHIBIT A

Leggett & Platt, Inc. *and* International Association of Machinists and Aerospace Workers (IAM), AFL–CIO. Cases 09–CA–194057, 09–CA–196426, and 09–CA–196608

December 17, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND KAPLAN

On October 2, 2017, Administrative Law Judge Andrew S. Gollin issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party each filed cross-exceptions and a supporting brief, and all parties filed an answering brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.[2]

The Board has carefully considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[3] findings,[4] and conclusions and to adopt the recommended Order as modified and set forth in full below.[5]

AMENDED REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order the Respondent to cease and desist from engaging in such conduct and, as explained in the remedy section of the judge's decision, to take certain steps to effectuate the policies of the Act.

For the reasons set forth in *Caterair International*, 322 NLRB 64 (1996), we find that an affirmative bargaining order is warranted in this case as the "traditional, appropriate" remedy for the Respondent's unlawful withdrawal of recognition. Id. at 68.

In several cases, however, the U.S. Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such an order. See, e.g., *Vincent Industrial Plastics v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Bldg. Material Corp. v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); *Exxel/Atmos, Inc. v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In *Vincent*, supra, the court summarized its requirement that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' [Section] 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." Id. at 738.

Although we respectfully disagree with the court's requirement for the reasons set forth in *Caterair*, supra, we have examined the particular facts of this case as the

[1] Proposed-Intervenors, 11 employees employed by the Respondent, filed proposed exceptions and a supporting brief to the Administrative Law Judge's decision. On January 23, 2018, the Board granted the General Counsel's Motion to Strike the Proposed-Intervenors' exceptions and brief.

[2] Member Emanuel is recused and took no part in the consideration of this case.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d. Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[4] Applying *Levitz Furniture Co. of the Pacific*, 333 NLRB 717 (2001), the judge found that the Respondent violated Sec. 8(a)(5) and (1) by withdrawing recognition from the Union because the Respondent failed to prove that the Union had actually lost majority support on March 1, 2017, the date recognition was withdrawn, and by thereafter unilaterally making changes to 12 of the employees' terms and conditions of employment without giving the Union notice or an opportunity to bargain. We affirm these findings. Chairman Ring and Member Kaplan affirm these findings under extant law in the absence of a Board majority to reconsider it in this case. Member McFerran believes that the Board should not revisit *Levitz* in a future case without first providing public notice and an invitation to file briefs.

For the reasons set forth in the judge's decision, the Board further affirms the finding that the Respondent violated Sec. 8(a)(1) when a supervisor unlawfully provided aid to the decertification petition that was filed after the withdrawal of recognition. In the absence of exceptions, we also adopt judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(5) and (1) by unilaterally changing the job-bidding procedure.

[5] We shall modify the judge's recommended Order to conform to the Board's standard remedial language. In accordance with our decision in *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143, slip op. at 1 (2016), we shall modify the judge's recommended tax compensation and Social Security reporting remedy. Further, the Respondent, having unilaterally changed employees' terms and conditions of employment, must make employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct. Accordingly, the Respondent shall reimburse the unit employees for any expenses resulting from the Respondent's failure to continue the benefits provided for under the expired collective-bargaining agreement, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). The make-whole remedy shall be computed in accordance with *Ogle Protection Service, Inc.*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). We shall substitute a new notice to conform to the modified Order. Finally, because we otherwise find that the Board's standard remedies are sufficient to effectuate the policies of the Act, we deny the General Counsel's request for a notice-reading remedy.

court requires and find that a balancing of the three factors warrants an affirmative bargaining order.[6]

(1) An affirmative bargaining order in this case vindicates the Section 7 right of employees who have been represented by the Union since 1965. At all relevant times, the Union was actively engaged in representing the unit employees and had requested bargaining with the Respondent for a successor agreement in order to advance employees' interests with respect to their terms and conditions of employment.[7] Following the expiration of the parties' agreement, the Respondent withdrew recognition from the Union without showing that the Union had actually lost majority support on the date recognition was withdrawn, and the Respondent implemented several material and substantial changes to employees' terms and conditions of employment without giving the Union notice or an opportunity to bargain. The expiration of the parties' agreement, however, did not extinguish either the employees' right to have the Union represent them or the Respondent's obligation to recognize and bargain with its employees' chosen representative. The Respondent's unlawful conduct demonstrated disregard for the employees' Section 7 right to choose union representation and tended to undermine unit employees' continuing support for the Union.

At the same time, a bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable period of time, will not unduly prejudice the Section 7 rights of employees who may oppose continued union representation. The bar does not continue indefinitely, but rather only for a reasonable period of time to allow the good-faith bargaining that the Respondent's unlawful withdrawal of recognition cut short. It is only by restoring the status quo ante and requiring the Respondent to bargain with the Union for a reasonable period of time that the employees' Section 7 right to union representation is vindicated. It will also give employees an opportunity to fairly assess the Union's effectiveness as a bargaining representative and determine whether continued representation by the Union is in their best interests.

In concluding that a bargaining order is appropriate, we are mindful of the decertification petition pending in this case. That petition, however, has remained blocked by the Respondent's unlawful conduct—the unlawful withdrawal of recognition, unilateral changes to several of the employees' terms and conditions of employment, and significantly, the Respondent's unlawful aid in the decertification effort. The Respondent argues that instead of a bargaining order, the Board should proceed with an election; however, doing so without first giving the Union an opportunity to reestablish itself with the bargaining unit employees would unjustly reward the Respondent for its unlawful interference in the collective-bargaining process and its unlawful role in the decertification effort.

(2) An affirmative bargaining order serves the purposes and policies of the Act by fostering meaningful collective bargaining and industrial peace, and by removing the Respondent's incentive to delay bargaining in the hope of further discouraging support for the Union. Such an order also ensures that the Union will be afforded a reasonable time to bargain and not be pressured to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and issuance of a cease-and-desist order. A bargaining order seems particularly conducive to the aim of industrial peace given that the parties have enjoyed over a 50-year collective bargaining relationship.

(3) A cease-and-desist order alone would be inadequate to remedy the Respondent's withdrawal of recognition, refusal to bargain, and unilateral changes. Standing alone, such an order would not provide the Union with a reasonable period of time to bargain and would allow another challenge to the Union's majority status before the taint of the Respondent's unlawful conduct has dissipated and before the unit employees have had a reasonable time to regroup and bargain through their chosen representative in an effort to reach a successor agreement. Such a result would be particularly unjust here because the Respondent's unlawful withdrawal of recognition, accompanied by its unlawful assistance to the decertification petition filed only a month later, would likely have a continuing effect, thereby tainting any employee disaffection from the Union arising during that period or immediately thereafter. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

For all of the foregoing reasons, we find that an affirmative bargaining order with its temporary decertifica-

[6] Chairman Ring and Member Kaplan would adopt the D.C. Circuit's view that the Board should determine, on the facts of each case, whether an affirmative bargaining order and the attendant decertification bar is appropriate by balancing the three considerations set forth in *Vincent Industrial Plastics*, supra. They agree that the conditional three-factor analysis set forth here in affirming the need for an affirmative bargaining order is consistent with extant precedent, but in light of adverse judicial rulings they believe this precedent warrants full Board review in a future case.

[7] The parties' most recent collective-bargaining agreement was effective from February 28, 2014, through February 28, 2017.

tion bar is necessary to fully remedy the Respondent's unfair labor practices in this case.[8]

ORDER

The National Labor Relations Board orders that the Respondent, Leggett & Platt, Inc., Winchester, Kentucky, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from the International Association of Machinists and Aerospace Workers (IAM) District Lodge No. 619, AFL–CIO (Union), and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of unit employees.

(b) Undermining the Union and interfering with employee free choice by directing an employee to meet with another employee for the purpose of obtaining signatures on a petition to decertify or repudiate the Union.

(c) Making the following changes to bargaining unit employees' terms and conditions on or about March 1, 2017: wages, paid personal time, health insurance, vacation, stock bonus plan, 401(k) plan, dental insurance, vision insurance, flexible spending plan, life insurance, short term disability insurance, and long term disability insurance, without affording the Union notice and an opportunity to bargain.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> The Company's production and maintenance employees at the Company's New Street and Ecton Road, Winchester, Kentucky plants, including inspectors and shipping and receiving employees. Excluded from recognition under this Agreement are the Company's over-the-road drivers, officer clerical employees, quality auditors, inventory control employees, parts room attendants, guards, professional employees, and supervisors as defined by in the Act.

(b) On request of the Union, rescind the unilateral changes made to terms and conditions of employment with respect to wages, paid personal time, health insurance, vacation, stock bonus plan, 401(k) plan, dental insurance, vision insurance, flexible spending plan, life insurance, short term disability insurance, and long term disability insurance, made on or about March 1, 2017, and continue in effect any or all of the terms and conditions set out in the collective-bargaining agreement effective from February 28, 2014, to February 28, 2017, and continue those terms and conditions in effect unless and until changed through collective-bargaining with the Union.

(c) Make unit employees whole, with interest, for any loss of earnings and other benefits suffered as a result of the Respondent's repudiation of the collective-bargaining relationship.

(d) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 9, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its New Street and Ecton Road, Winchester, Kentucky

[8] The Respondent relies on *Scomas of Sausalito, LLC v. NLRB*, 849 F.3d 1147 (D.C. Cir. 2017), in arguing that an affirmative bargaining order is not justified in this case. *Scomas* is easily distinguishable, however. In denying enforcement of the Board's affirmative bargaining order in that case, the court relied on the fact that the union had neglected its representational duties and had not even requested bargaining for a year after the contract expired, that the union said nothing to the employer about its intention to persuade employees to revoke their signatures from the decertification petition, and thereafter the union withheld information about its restored majority status until after the employer withdrew recognition. Further, the court noted that the union did not "spring back into action" by filing unfair labor practice charges until after the petitioners withdrew their decertification petition from the Board, believing that they were free of the union based on the respondent's withdrawal of recognition. Thus, the union at every turn seemed to "sit on its hands," and the court did not believe that it would be serving employee free choice, a core principle of the Act, by enforcing an affirmative bargaining order in that case. Id. at 1156–1158. By contrast, the Union in the present case was actively representing the unit employees at all material times and had requested bargaining with the Respondent for a successor agreement both before and after the Respondent announced that it would be withdrawing recognition from the Union upon the expiration of the parties' agreement on February 28, 2017. Moreover, as noted above, the Union filed unfair labor practice charges on the very day the Respondent's withdrawal of recognition from the Union took effect.

plants copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2017.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 9 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 17, 2018

John F. Ring, Chairman

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT withdraw recognition from the International Association of Machinists and Aerospace Workers (IAM) District Lodge No. 619, AFL–CIO (Union), and fail and refuse to bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate bargaining unit:

> The Company's production and maintenance employees at the Company's New Street and Ecton Road, Winchester, Kentucky plants, including inspectors and shipping and receiving employees. Excluded from recognition under this Agreement are the Company's over-the-road drivers, officer clerical employees, quality auditors, inventory control employees, parts room attendants, guards, professional employees, and supervisors as defined by in the Act.

WE WILL NOT make changes in wages, hours, and other terms and conditions of employment, including, but not limited to, employees' wages, paid personal time, health insurance, vacation, stock bonus plan, 401(k) plan, dental insurance, vision insurance, flexible spending plan, life insurance, short term disability insurance, or long term disability insurance, without giving the Union notice and an opportunity to bargain.

WE WILL NOT direct you to employees in an effort to get you to sign a petition to decertify or repudiate the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of our bargaining unit employees concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed collective-bargaining agreement.

WE WILL, on request of the Union, adhere to any or all of the terms and conditions set out in the February 27,

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

2014, through February 28, 2017 collective-bargaining agreement, and continue those terms and conditions in effect unless and until changed through collective bargaining with the Union.

WE WILL, on request by the Union, rescind any or all changes to your terms and conditions of employment that we made on or about March 1, 2017, without bargaining with the Union, including, but not limited to, employees' wages, paid personal time, health insurance, vacation, stock bonus plan, 401(k) plan, dental insurance, vision insurance, flexible spending plan, life insurance, short term disability insurance, and long term disability insurance.

WE WILL pay you for the wages and other benefits lost because of the unilateral changes to terms and conditions of employment that we made without bargaining with the Union.

WE WILL make you whole for any loss of earnings and other benefits you have suffered because of our repudiation of the collective-bargaining relationship.

WE WILL compensate you for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 9, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

LEGGETT & PLATT, INC.

The Board's decision can be found at www.nlrb.gov/case/09-CA-194057 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Zuzana Murarova, Esq., for the General Counsel.
Arthur T. Carter and *A. John Harper III, Esqs.* for the Respondent.
William H. Haller, Esq. for the Charging Party.

DECISION

I. INTRODUCTION[1]

ANDREW S. GOLLIN, ADMINISTRATIVE LAW JUDGE. These consolidated cases were tried on July 24–26, 2017,[2] in Mt. Sterling, Kentucky. The complaint alleges that Leggett & Platt, Inc. (Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act (Act) when on March 1 it withdrew recognition from the International Association of Machinists and Aerospace Workers (IAM), AFL–CIO (Union) as the collective-bargaining representative of a unit of production and maintenance employees, and, thereafter, unilaterally changed employees' wages, paid personal time, health insurance, vacation, stock bonus plan, 401(k) plan, dental insurance, vision insurance, flexible spending plan, life insurance, short and long term disability insurance, and job bidding procedures, without bargaining with the Union.

Under *Levitz Furniture Co. of the Pacific*, 333 NLRB 717 (2001), Respondent has the burden of proving, through objective evidence, that the Union lost the support of a majority of the unit as of the March 1 withdrawal of recognition. To meet its burden, Respondent relies upon a petition signed by 181 of the then 299 unit employees stating they did not want to be represented by the Union. The General Counsel argues 43 of those signatures are invalid because, prior to March 1, 15 of the signatories left the unit, and the other 28 signatories later crossed over and signed a prounion petition, thereby reducing the total number of signatures below the required majority. Respondent argues at least 11 of the crossovers should be counted as supporting the antiunion petition because: (1) the Union never notified Respondent about the prounion petition before March 1; (2) the Union confused, coerced, or made misrepresentations to crossovers to sign the prounion petition; and (3) if the crossovers were allowed to testify about their subjective views, 11 would state they did not support the Union as of March 1. After considering the evidence and applicable law, I find Respondent failed to meet its burden of proving, through objective evidence, an actual loss of majority support as of March 1. Respondent, therefore, violated Section 8(a)(5) and (1) of the Act when it withdrew recognition and made the unilateral changes to these terms and conditions of employment, except for job bidding for which I find insufficient evidence of an actual change.

After Respondent withdrew recognition, the Union filed unfair labor practice charges. While those charges were pending, employees circulated another decertification petition. The complaint alleges, and I find, that in early April, Respondent's Human Resource Manager Stephen Day directed an employee to meet with a fellow employee to sign the decertification petition, in violation of Section 8(a)(1) of the Act.

[1] Abbreviations in this decision are: "Tr." for transcript; "Jt. Exh." for Joint Exhibits; "GC Exh." for General Counsel's Exhibit; "CP Exh." for Charging Party's Exhibit; "R. Exh." for Respondent's Exhibit; "GC Br." for General Counsel's brief; "CP Br." for Charging Party's brief; and "R. Br." for Respondent's brief.

[2] All dates refer to 2017, unless otherwise stated.

II. STATEMENT OF THE CASE

On March 1, the Union filed an unfair labor practice charge against Respondent, which was docketed as Case 09–CA–194057. On April 6, the Union filed another unfair labor practice charge against Respondent, docketed as Case 09–CA–196426. Based on its investigation, the Regional Director for Region 9 of the National Labor Relations Board (the Board) issued a complaint against Respondent alleging violations of Sections 8(a)(5) and (1) of the Act. On April 10, the Union filed a third unfair labor practice charge against Respondent, docketed as Case 09–CA–196608. On April 24, Respondent filed its answer to the complaint. On April 27, the Regional Director issued an amended complaint, which Respondent answered on May 11. On May 22, the Regional Director issued an order consolidating cases, consolidated complaint and notice of hearing, which Respondent answered on May 25. On May 26, the Union filed a first-amended unfair labor practice charge against Respondent in Case 09–CA–196426. On June 15, the Regional Director issued an Order Further Consolidating Cases, Second Consolidated Complaint and Notice of Hearing (Complaint) in the above-referenced cases.[3] Respondent filed its answer to the Complaint on June 29, and filed its amended answer to the Complaint on July 14. Respondent denies committing any violations of the Act.

On July 19, Keith Purvis and 10 other employees filed a written motion to intervene. On July 20, the Regional Director issued an order denying the motion. At the commencement of the hearing, Attorney Aaron B. Solem, from the National Right to Work Legal Defense Foundation, Inc., on behalf of Mr. Purvis and the other employees, orally moved to intervene, asserting the same arguments contained in his July 19 written motion. Mr. Solem and the parties argued their positions. After carefully considering their arguments and the applicable law, I orally denied the motion to intervene for the reasons stated on the record.[4]

At the hearing, all parties were afforded the right to call, examine, and cross-examine witnesses, present any relevant documentary evidence, and argue their respective legal positions orally. Respondent, Charging Party, and General Counsel filed posthearing briefs, which I have carefully considered. Accordingly, based upon the entire record, including the posthearing briefs and my observations of the credibility of the witnesses, I make the following

[3] The General Counsel moved, without objection, to withdraw par. 7(a) of the complaint, alleging Respondent violated Section 8(a)(5) and (1) since March 1, by failing to remit union dues deducted pursuant to valid, unexpired, and unrevoked employee checkoff authorizations. The motion was granted.

[4] There was no request made for special permission to appeal my ruling, and the parties have not argued in their posthearing briefs for me to reconsider my ruling regarding the motion to intervene. Attorney Solem filed a posthearing brief on the merits. Although I maintain my ruling denying intervention, including denying Attorney Solem's request to submit a posthearing brief, I reviewed the brief and find that the arguments and authority contained therein would not cause me to alter my decision.

III. FINDINGS OF FACT[5]

A. Jurisdiction

Respondent is a corporation with offices and places of business on New Street and on Ecton Road in Winchester, Kentucky, where it has been engaged in the manufacture and the nonretail sale of commercial and residential furnishings. In conducting its operations during the preceding 12-month period ending May 31, 2017, Respondent sold and shipped from its Winchester facilities goods valued in excess of $50,000 directly to points outside the Commonwealth of Kentucky. Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act. Based on the foregoing, I find this dispute affects commerce and the Board has jurisdiction, pursuant to Section 10(a) of the Act.

B. Collective-Bargaining Relationship

From September 1965 until March 1, 2017, Respondent recognized the Union as the exclusive collective-bargaining representative of the employees in the following unit pursuant to 9(a) of the Act:

> The production and maintenance employees at the [Respondent's] New Street and Ecton Road, Winchester, Kentucky plants, including inspectors and shipping and receiving employees. Excluded from recognition under this Agreement are the [Respondent's] over-the-road drivers, office clerical employees, quality auditors, inventory control employees, parts room attendants, guards, professional employees, and supervisors as defined in the Act.

Respondent's recognition of the Union has been embodied in successive collective-bargaining agreements, the most recent of which was effective from February 28, 2014 to February 28, 2017. (Jt. Exh. 1.)

C. Background[6]

1. Respondent's operations

Respondent manufactures innerspring mattresses at its New Street facility, where it employs approximately 250 unit em-

[5] Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations, but rather on my review and consideration of the entire record for this case.

[6] The following factual summary is a compilation of the credible and uncontroverted testimony. To the extent there is a critical dispute in testimony, I have assessed the witnesses' credibility considering a variety of factors, including the context of the witness' testimony, demeanor, corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003). Those assessments are discussed below. Credibility findings need not be all-or-nothing propositions. Indeed, nothing is more common in judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, supra.

ployees. Respondent handles shipping and receiving at its warehouse facility on Ecton Road, where it employs approximately 50 unit employees.

2. Withdrawal of recognition

In December 2016, Keith Purvis began circulating an antiunion petition. The top of each page of the petition contained the following language:

EMPLOYEE PETITION
FOR THE UNION DECERTIFICATION

The undersigned employees of Leggett & Platt #002 do not want to be represented by IAM 619 hereinafter referred to as "union".

(R. Exh.7, Tr. 318, 328, 379–380).[7]

On around December 19, 2016, Purvis provided Respondent's General Manager, Chuck Denisio, with the petition, signed by a majority of the unit employees. Upon receiving the petition, Denisio asked two managers (John Omohundro and Kurt Bruckner) to review and verify the signatures by comparing them against the signatures contained on documents in the employees' personnel files. There were two signatures that Omohundro and Bruckner did not count: one was a duplicate (Kelly Barnett), and one that was not verifiable based on personnel records (Fred Gross). (Tr. 238:10–17, 241:19–17.)

On or around December 22, 2016, the Union's Directing Business Representative, Billy E Stivers Sr., sent Denisio a letter officially notifying Respondent of the Union's desire to terminate the parties' expiring collective-bargaining agreement and to begin negotiations over a successor agreement. (Jt. Exh. 2.)

Purvis and others continued to collect signatures on the antiunion petition through December 2016 and into January. Purvis provided Denisio with additional signatures for the petition in January. Denisio also had a manager (Cathy Spencer) review and verify those signatures against those in the employees' personnel files. (Tr. 475–477.) The evidence establishes that as of early January, the antiunion petition contained signatures from a majority of the employees in the unit.

On January 11, General Manager Denisio sent Union Directing Business Representative Stivers a letter in response, stating:

> We have received evidence from a majority of employees in the bargaining unit that they no longer wish to be represented by your union. Accordingly, we will not negotiate a successor agreement to our current collective bargaining agreement, and we will withdraw our recognition of your union as our employees' representative effective when the current collective bargaining agreement expires on February 28, 2017. We will continue to honor the Company's obligations under the collective bargaining agreement and under the law through and including that date.

(Jt. Exh. 4.)

[7] Keith Purvis led the decertification effort, but Jacob Purvis, Jonathan Bryant, George McIntosh, and Ricky Marshall also gathered signatures for the antiunion petition.

On January 12, Denisio also sent the unit employees a letter, informing them that the Company notified the Union that when the current agreement expires, the Company will no longer recognize the Union as the employees' bargaining representative, and the Company informed the Union that it will not bargain over a successor agreement. The letter then went on to explain specific changes that would be made following the expiration of the collective-bargaining agreement, including a wage increase, personal paid time off, lower health insurance deductibles, shorter periods of time to accrue vacation, the implementation of stock bonus plan, offering eligibility to participate in a 401(k) plan, changes in dental and vision insurance providers, changes to life and disability insurance benefits, etc. (Jt. Exh. 5.)

At around the time Respondent sent these letters, the Union posted flyers at Respondent's facilities announcing an open house at the Union Hall from Wednesday, January 18 from 5:30 a.m. to Thursday, January 19 at 7:30 a.m. for unit employees "to learn more about right to work state and decert of union." (GC Exh. 7.)

The union hall is in a three-story building. On the third floor, there are three adjoining rooms. One room contains the union business office; another room has a refrigerator and tables; and the third room is where the Union holds meetings. The Union made no presentations or speeches during this open house. Instead, it set out written information in the Union office for members to review, and union officials were present to answer questions.

During the open house, most union members entered the union office from the hallway. Upon entering the union office, there was a desk to the right and a desk to the left. These desks were approximately 15–20 feet apart. (Tr. 638.) On one of the desks there were three stacks of paper with information regarding the Union, health insurance, and the possible effects of no longer having a union. (Tr. 653–654) (GC Exh. 6). Near these stacks of information was a petition for employees to sign. (GC Exh. 2.) The top of the petition stated, "We the undersigned members of the International Association of Machinists and Aerospace Workers, Local Lodge 619, support the Union at Leggett & Platt, Inc."[8] Below that were lines for employees to

[8] At the hearing, there was a dispute as to whether this "We the undersigned members of the International Association of Machinists and Aerospace Workers, Local Lodge 619, support the Union at Leggett & Platt, Inc." language was on the petition at the time employees signed it. Union President Elmer Tolson and Union Chief Committeeman Marvin Berry testified that this language was preprinted on the top of every petition page presented to employees to sign. (Tr. 71–72; 112.) Employees Cecil Gross and Paul Haddix confirmed that the language was on the top of the petition when they signed it. (Tr. 633–634; 644.) Employee Justin Gilvin testified that the petition "looked like this" (referring to GC Exh. 2, which contained the above language) when he signed it. (Tr. 618.)

Respondent asked several of its witnesses about whether the above language was on the petition at the time they signed it, and almost all either testified that they did not actually read the petition before signing it (e.g., Brian Patrick (Tr. 595) and Jack Keith (Tr. 410), or that they could not recall or were uncertain what the petition said when they signed it (e.g., Glen Dixon (Tr. 429), Tim Keeton (Tr, 456), Marvin Rogers (Tr. 470), James Green (Tr. 493–494), James Wells (Tr. 513),

print, sign, and date their names. (GC Exh. 2.)

At the other desk, there was a sign-in sheet for employees to vote if they wanted to go out on strike.[9] This sign-in sheet had two preprinted columns of numbered lines for signatures, and nothing else. There was no heading or written explanation for the purpose of the sign-in sheet. (GC Exh. 3.) There was someone from the Union who told the employees as they came through the line that they should sign the sheet if they wanted to vote on going out on strike and to receive strike benefits in the event a strike was called. (Tr. 672–673.) Once the employees signed this sheet, they were given a ballot to vote whether they wanted to go out on strike. There was a box for the employees to cast their ballot. (Tr. 673.) Several members who signed the prounion petition also signed the sign-in sheet for the strike sanction vote.

Although the Union made no formal presentations during the open house, some members did ask questions or raised concerns. There is no claim that a union official said anything during this open house to threaten or pressure employees into signing the petition.[10]

The Union continued to gather additional signatures on the prounion petition after the January 18–19 open house. Union President Elmer Tolson and Union Chief Committeeman Marvin Berry gathered signatures at the Union hall and near Respondent's New Street facility. (Tr. 70; 107–113.)[11] All of the signatures on the prounion petition were gathered before expiration of the parties' collective-bargaining agreement. (GC Exh. 2.)

On February 21, Stivers sent Denisio a letter disputing Respondent's claim that a majority of IAM represented employees no longer wished to be represented by the IAM, and that as the certified bargaining representative of those employees, the Union demanded to meet with the company to bargain and to set dates and times to negotiate a successor agreement. (Jt. Exh. 6.) The following day, Denisio sent Stivers a letter, which states:

> As the company explained in its January 11, 2017 letter to you, it has received a signed petition from a majority of its bargaining unit employees that they no longer desired to be represented by the Union when the current collective bargaining agreement expires on February 28, 2017. To date, the Company has not received any evidence indicating that any employees have changed their minds in this regard. Accordingly, the Company intends to withdraw recognition upon expiration of the agreement. Until that time, it will comply with the agreement and its obligations under the law.

(Jt. Exh. 7.)

On March 1, Denisio sent Stivers a letter largely reiterating the contents of its February 22 letter and informing the Union that now that the agreement has expired, the company withdrew recognition from the Union as the bargaining representative. (Jt. Exh. 9.)

As of March 1, there were a total of 295 employees in the bargaining unit. (Jt. Exh. 8.) There were 181 signatures on the antiunion petition.[12] As of March 1, 15 of those signatories had

---

and Tina Freeman (Tr. 560)). Ashley Rogers was the only witness who testified that the language was not on the petition when she signed it. (Tr. 605). However, her signature appears on the same page as Elmer Tolson and Paul Haddix, who both testified that the language was on the petition when they signed it. Rogers also testified that when she signed the petition, she also signed the sign-in sheet for the strike vote, discussed infra. There is no dispute that the sign-in sheet had no language on the top. (GC Exh. 3, pg. 1.) Under these circumstances, I believe that Rogers was mistaken or confusing the documents when she testified that the prounion petition did not contain the above language when she signed it. Therefore, I credit the corroborated testimony of those 5 witnesses who specifically read and recalled the language on the petition, and they confirmed that it contained the above language.

[9] According to Tolson, under the Union's constitution, the Union must have a strike sanction vote before going out on strike; otherwise, the members who strike will not be able to receive strike benefits.

[10] Respondent contends that employees were confused when they signed the prounion petition. (R. Br. 10.) I need not assess the credibility of these statements on this point because I find, as discussed more fully below, under Board law, the prounion petition contained unambiguous language, and there has been no claim regarding literacy or issues with understanding English.

[11] A. Dwayne Hawkins, an employee, testified that on around February 27, Tolson approached him and two other employees (Rick Dunaway and Buddy Helton) while they were standing in a parking lot across from Respondent's facility about the prounion petition. According to Hawkins, Tolson talked about the antiunion petition and said:

> [B]oys, if you all let the Union go, then–if you let the Union go, then your insurance is going to double, you're going to lose your job. He said you all's job is the first one to go. He said if the Union goes, this job is gone. That's about–pretty much, that's about it.

(Tr. 585–586.) The General Counsel recalled Tolson as a rebuttal witness, and he denied making these statements. (Tr. 654–655.) Neither party called Dunaway or Helton.

I credit Tolson over Hawkins regarding this exchange. Overall, I found Tolson to be an honest witness who provided logical, detailed testimony about events. Hawkins, in contrast, seemed to be paraphrasing the exchange based upon his impressions of what was discussed, as opposed to what was actually said and the context in which it was said. Finally, I find it telling that no other witness testified about Tolson, or any other Union official, making similar statements.

[12] There is a dispute whether the names/signatures of employees Fred Gross, Donnie Butler, and William Woodruff on the antiunion petition should be counted. Fred Gross's printed name and signature appear on the antiunion petition. (R. Exh. 7, pg. 2 (line 15).) "Fred Gross"s is printed, but "Mr. Gross" is the signature. To the left of the name/signature is the handwritten word "no." Gross did not testify at the hearing. Jacob Purvis testified that Gross signed the petition and then asked to have his name removed, so Purvis wrote the word "no" next to Gross's name. (R. Exh. 7, pg. 2 (line 15).) John Omohundro, one of the managers tasked with verifying the signatures, testified that Respondent did not count Gross's signature because he could not verify it as being the same as the signatures in Gross's personnel file. (Tr. 274–275, 285.) I credit Purvis's testimony that Gross asked to have his name removed from the antiunion petition prior to its submission to Respondent, and that Purvis wrote "no" next to Gross's name before it was submitted to Respondent, largely because it is against Purvis's self-interest as one of the proponents of the decertification effort to not have Gross's signature on the petition be counted. Moreover, I note that Gross's name/signature also appears on the prounion petition. (GC Exh. 2, pg. 4 (line 20).) In my review of both petitions, the handwriting appears to closely match. Regardless, under these circumstances, I find Gross's signature on the antiunion petition will not be counted.

left the bargaining unit, and 28 of the remaining signatories subsequently crossed over and signed the prounion petition. The 28 crossover employees are: Michael Bowman, Shane Caves, Terris Cesefske, Dustin Day, Glenn Dixon, Reuben Elkins, Tina Freeman, Justin Gilven, James Green, Fred Gross, Paul Haddix, Albert Hawkins, Timothy Keeton, Jack Keith, Christian McIntosh, Brian Patrick, Christopher Payne, Jose Pesina, Leopold Pesina, Charles Randall, Tommy Roberts, Ashley Rogers, Marvin Rogers, Frederick Sandefur, Paul Troy, Tyler Troy, James Wells, and James Wren. (Tr. 675–676, GC Exh. 2, R. Exh. 7.)[13] Respondent never provided the Union with a copy of, or the names of the signatories to, the antiunion petition, and the Union never provided Respondent with a copy of, or the names of the signatories to, the prounion petition.

3. Unilateral changes to wages, hours and other terms and conditions

a. Undisputed changes

The parties entered into a Stipulation of Facts that after Respondent's March 1 withdrawal of recognition from the Union, it unilaterally made material, substantial, and significant changes to the unit employees' wages, hours, and other terms and conditions of employment, without bargaining with the Union. (Jt. Exh. 10). Specifically, Respondent increased wages by three percent; changed the days off benefit to provide three paid days off rather than five unpaid days off; changed health insurance provider and network from Baptist Health to BlueCross BlueShield; and made the following changes to health insurance:

	Old Plan	New Plan
Deductible SIF	$2,500/$5,000	$1,000/$3,000
Medical Opp	$3,900/$11,800	$3,900/$9,700
RX Opp	$2,000/$4,000	$2,000/$4,000
Office Co-Pay	$30	$30

Respondent also changed the vacation plan as follows:

Length of	Amount Under Old Plan	Amount Under New
90 days		1 week
1 year	1 week	2 weeks
3 years	2 weeks	
7 years		3 weeks
10 years	3 weeks	
15 years		4 weeks
20 years	4 weeks	

Additionally, Respondent provided the employees with a new stock bonus plan and a new 401(k) plan. It also changed the dental insurance provider from Delta Dental to MetLife, and changed the vision insurance provider from Avesis Vision to VSP. It provided a new health flexible spending plan. It changed basic life insurance coverage from a flat amount of $28,500 to the employee's annual earnings, up to $50,000; changed the available supplemental life insurance from $10,000 to up to five times the basic life insurance benefit and changed available dependent life insurance from $10,000 to $50,000 for a spouse and from $5000 to $15,000 for children; changed short term disability from a flat rate of $280 per week to 40 percent

---

Donnie Butler's printed name and signature appear on the antiunion petition. (R. Exh. 7, pg. 11 (line 6).) There is a dispute as to whether Butler's signature was on the petition when it was initially submitted to Respondent in December 2016. George McIntosh, one of the employees who gathered signatures for the antiunion petition, testified that he and Butler drive to work together each day. McIntosh spoke with Butler about supporting the antiunion petition. McIntosh testified that when he gave Butler the petition to sign, Butler printed but did not sign his name. Later, after McIntosh noticed this, he asked Butler if he would sign his name. On the antiunion petition, there is a signature next to Butler's printed name, along with the date of December 5, 2016. Butler did not testify at the hearing. None of the witnesses witnessed or could verify Butler's signature. (Tr. 278–279; 368; 375–376.) According to Denisio, Butler at some point came to the office to put his signature on the petition after it was submitted to Respondent (but before the March 1 withdrawal of recognition). Denisio testified that for whatever reason Butler's signature could not be verified, so it was not counted as supporting the antiunion petition. (Tr. 276–277.) Under these circumstances, I find that Butler's unverified signature will not be counted as supporting the antiunion petition. *Latino Express, Inc.*, 360 NLRB 911, 923 (2014).

William Woodruff's printed name and signature appear on the antiunion petition. (R. Exh. 7, pg. 19 (line 1).) Woodruff's is the only name/signature on the page. There are three other pages from the petition that contain only one name/signature. (R. Exh. 7, pgs. 9–10, 20.) At the hearing, Woodruff testified that this was not his handwriting, and that he did not sign or authorize anyone to sign the petition on his behalf. (Tr. 629–630.) Woodruff worked for Respondent for approximately 4 months before he was terminated for "alcoholism" and "being drunk on the job." (Tr. 631.) Woodruff testified he does not harbor any animosity toward Respondent for his termination, and that he does not believe that his alcoholism has any effect on his memory or recall. At the hearing, Jacob Purvis testified that he personally obtained Woodruff's signature, confirming that he saw Woodruff "put pencil or pen to paper to sign it." (Tr. 323.) Human Resource Manager Cathy Spencer testified that she was able to verify Woodruff's signature on the petition with those in his personnel file. (Tr. 477–478.) Signatures can be properly authenticated by witnesses, the employees themselves, or by handwriting comparison. See *Action Auto Stores*, 298 NLRB 875, 879 (1990) (citing Fed. R. Evid. 901(b)(3)) (authenticating cards by comparing the signature on the card with the employee's employment application); *Parts Depot, Inc.*, 332 NLRB 670, 674 (2000); *Thrift Drug Co. of Pennsylvania*, 167 NLRB 426, 430 (1967) (cards authenticated by comparison with other samples by nonexperts); *Traction Wholesale Ctr. Co.*, 328 NLRB 1058, 1059 (1999) (cards authenticated by judicial comparison of signatures to other records); *Justak Bros. and Co.*, 253 NLRB 1054, 1079 (1981) (same). Under these circumstances, I find that Woodruff's signature was authenticated and will be counted as supporting the antiunion petition.

[13] At the hearing, Respondent made offers of proof that 11 crossover employees, including Jack Keith (Tr. 412:22–413:11), Glen Dixon (Tr. 435:7–436:25), Timothy Keeton (Tr. 458:4–459:12), Marvin Rogers (Tr. 472:1–24), James R. Green (Tr. 487:24–488:18), James Wells (Tr. 514:6–515:5), Tina Freeman (Tr. 562:3–15, 564:1–6), Albert Hawkins (Tr. 587:10–17), Brian Patrick (Tr. 596:2–11), Ashley Rogers (Tr. 607:25–608:7), and Justin Gilvin (Tr. 621:22-622:3), opposed to the Union on March 1, despite their signatures on the prounion petition. The General Counsel and the Union objected to the introduction of evidence of employees' subjective views as being irrelevant. I sustained those objections.

of average weekly earnings; and provided long-term disability of 60 percent of average weekly earnings for employees' choice of a 2 year or 5-year benefit period. Respondent announced it would make no changes to the pension plan until December 31, 2017, at which point bargaining unit employees will become limited participants. Respondent did not make any changes to the discount stock plan or to paid holidays. Also, on March 1, Respondent ceased checking off dues from unit employees' pay checks. (Jt. Exh. 10.)

b. Job bidding procedures

The General Counsel contends that Respondent also unilaterally changed the established job bidding procedure following its withdrawal of recognition. Article 9 of the parties' collective-bargaining agreement sets forth the job bidding procedure. According to the procedure, in the event of a new or permanently vacated job, the Company will post on all bulletin boards notice of the opening and the person vacating that job. The posting will remain up for 48 hours, starting at 12 noon. Qualified employees who wish to be considered must file a written bid for the position with the Plant Superintendent within the notice period. Job bid cards must be stamped or signed and dated by a Supervisor as to the time and date they were filed. The Company shall furnish the Union in writing with the names of all bidders for the job within 24 hours after the end of the posting period. All jobs are to be posted within 15 days of the date they become vacant. Jobs are to be awarded based on plant seniority. In the event no qualified unit employee bids on the job, the job may be filled with junior employees or new hires. The names of employees awarded the jobs are to be posted. (Jt. Exh. 1.)

Article 9 identifies there are certain jobs for which the original job vacancy and 1 additional vacancy are subject to this posting and bidding procedure. For all other vacancies the original vacancy shall be subject to the above procedure, and any further resulting vacancies will be filled by the Company without regard to said procedure. Article 9 does not address temporary transfers.[14]

Although the General Counsel acknowledges that Respondent continued to post vacant positions in accordance with Article 9 after March 1 withdrawal of recognition, he contends Respondent did not do so in all instances. In its posthearing brief, the General Counsel cites to specific instances Respondent allegedly did not comply with the l job bidding procedure.

First, the General Counsel argues that, on about June 2017, employee Ashley Rogers was transferred from her job as a clipper in the AT department on third shift to an assembly operator position in the AR department on third shift. (Tr. 79–80.) As proof, the General Counsel relies upon the testimony of Union President Elmer Tolson, who works in the AR department. He testified that Rogers moved over to that department on third shift, and he does not believe that Respondent posted and awarded the position in accordance with the contractual job bidding procedure. Tolson testified that he looks at the job posting bulletin board every day and he did not see any posting for the position at issue. (Tr. 80.) Respondent's General Manager Charles Denisio testified that the position at issue was posted, Rogers bid on that position, and she was awarded the position. (Tr. 226–227.)

The General Counsel argues that sometime after March 1, 2017, George McIntosh was moved from his job as a coiler specialist in the AR department on third shift to perform electrical work, including diagnosing equipment and electrical issues, after the prior maintenance engineer, Robert Ward, left to work as a branch accountant. (Tr. 83, 119–120, 219–221, 269–270.) Ward's maintenance engineer position was not a unit position. (Tr. 221.) The branch accountant position also is not a unit position. The General Counsel contends that the maintenance engineer job McIntosh got was not put up for bid. As proof, the General Counsel relies upon the testimony of Tolson and Union Chief Committeeman Marvin Berry who both testified that they regularly review the job bidding bulletin board and did not see any posting for the position at issue. The General Counsel also relies upon the job bid postings Respondent introduced into evidence, and the absence of any reference to the maintenance engineer position on those postings. (Tr. 83–84, 121; R. Exh. 4.)[15]

When McIntosh moved to cover Ward's position, Jacob Purvis was moved from his job as a preventative maintenance technician in the AR department to a coiler specialist position in the AR department on third shift, the job previously held by McIntosh. The General Counsel contends that McIntosh's position was not posted for bidding. (Tr. 80–82, 86–87, 221, 329.) Again, the General Counsel's evidence is that Tolson did not see the job posted on the bulletin board, and the absence of any reference to McIntosh's position on any of the postings Respondent introduced. (Tr. 82–83; R. Exh. 4.)

Charles Denisio testified about the situation involving Ward, McIntosh, and Purvis. (Tr. 222–224.) According to Denisio, Ward's maintenance engineer position was a management job, not a unit position. Ward informed Denisio that he had been diagnosed with a health condition, and that the condition made it painful for Ward to perform certain work out on the floor. Ward recently completed his accounting degree, and Respondent was in the process of implementing a new financial reporting system. So Denisio offered Ward an office accounting position on a probationary basis. This accounting position was a non-unit position. After Ward was moved to the office accounting position, McIntosh was temporarily transferred to cover the work that Ward had been performing. Although McIntosh is a licensed electrician, he required additional training in order to perform certain of the maintenance engineering tasks. As of the hearing, McIntosh was still considered a temporary transfer while he continued to learn the job and complete his probationary period (expected to last an additional 30 days or so). (Tr. 220–221.) After McIntosh was temporarily

[14] Arts. 9.12 and 9.13 address vacancies caused by FMLA leave or military leave. In the FMLA context, Respondent can post the position as a temporary bid while the incumbent employee is on leave, and then he/she will be able to return to the position upon returning to work. (Jt. Exh. 1..

[15] Respondent introduced several job posting sheets, both before and after March 1. Respondent utilized the same sheets, including the same information, following the March 1 withdrawal of recognition. (R. Exhs. 3 and 4.)

transferred, Denisio testified that Purvis was temporarily transferred to cover McIntosh's now open position based on Purvis's skills and experience. (Tr. 222.) According to Denisio, if Ward remains in the accountant position, McIntosh would move into the maintenance engineer position, and Respondent would then bid McIntosh's former position. If Purvis is not awarded that position, he would return to his former position. (Tr. 222.)

The General Counsel also cites to new employees (Robert Woodward and Kelly Withrow) who were hired into positions that were not posted for bidding. (Tr. 87.) Once again, the General Counsel primarily relies upon Tolson's testimony that he did not see these positions posted on the bulletin board. Robert Woodward was hired in about May 2017 to work first shift as a conveyor operator in the AR Department. (Tr. 88, 223.) Tolson did not see Woodward's position posted. (Tr. 87; R. Exh. 4.) Kelly Withrow was hired in about June 2017 as a conveyor operator on first shift in the AR department. (Tr. 88, 223.) Tolson did not see Withrow's position posted. (Tr. 88; R. Exh. 4.) On cross-examination, Tolson testified about these entry positions:

> Q. I'm going to ask about before March 1st. In fact, the practice at Leggett & Platt was that they did not post entry-level jobs for bid, correct?
> A. Unless you had somebody on second or third that wanted that job, then they would go to me or one of my stewards and ask.
> Q. And that rarely, if ever, happened, correct?
> A. Usually them job entry levels, they don't last long enough to bid, I'm sorry. So, yeah, you're correct in saying it rarely happened.
> Q. And just to finish the point, it rarely happened because the entry-level jobs are the lowest paid, hardest jobs in the factory, correct?
> A. Correct.
> Q. Now, after March 1, that practice continued. The entry-level jobs were not posted for bid, correct?
> A. Correct.

(Tr. 100–101.)[16]

Denisio confirmed that these entry level positions are not normally posted because there is high turnover and they are very basic jobs that most people will not bid on. Denisio testified that these positions have not been posted for "[m]aybe a year and a half, maybe longer than that." (Tr. 223–224.) This testimony was not refuted.

Next, the General Counsel cites to two unidentified individuals who were hired without Respondent complying with the contractual job bidding procedure. The General Counsel alleges that one was a female employee on third shift that was moved from a clipper position to a third shift coiler operator in the AR Department in about June/July 2017. The General Counsel relies upon the testimony of Marvin Berry, who testified that he did not see the particular job posted on the bulletin board. (Tr. 119, 121.) The General Counsel alleges that the other unidentified employee transferred from second shift clipping to day shift clipping in the AC department in about July 2017. (Tr. 119–120, 122.) Again, according to Berry's review of the bulletin boards, this job was not posted. (Tr. 120.)

Finally, the General Counsel cites to Kenny Grant. According to Berry, on around May 2017, Kenny Grant was re-hired into a second shift operator position/innerspring operator position in the AH department without having to bid on his job. (Tr. 134–137, 223, R. Exh. 4.) Berry had a conversation with Grant, who informed Berry that he had been rehired. On cross-examination, Berry testified he was not aware of the circumstances surrounding Berry being placed in the position. Denisio testified Grant was temporarily transferred to this position:

> Q. Were you present yesterday for testimony regarding Kenny Grant?
> A. Yes.
> Q. Are you familiar with his current work situation?
> A. Yes, I am.
> Q. What is his current work situation?
> A. He's a VRC operator on second shift.
> Q. Okay. And is there a situation with him with respect to temporary transfers?
> A. Yes, there is.
> Q. What is that?
> A. As we're training – second shift is – Your Honor, that's one of the harder shifts to work. It's, basically it's hotter than most. And we're – we have openings in this innerspring line, so Mr. Grant had previously been an operator. He came back. We hired him back as a clipper, and now he's training – help – we're training other people, and he's filling in till we get these other people filled. Then he'll go back to clipping.

(Tr. 222–223.)

After Respondent withdrew recognition on March 1, the Union filed unfair labor practice charges. After the charges were filed, employees began circulating a new decertification petition. Keith Purvis again took the lead in gathering signatures. On around April 4, Cordell Roseberry began working for Respondent at the New Street facility. He was hired by Respondent's Human Resource Manager Steven Day. Day met briefly with Roseberry in the morning of Roseberry's first day of work. The following day, Roseberry was standing near the computers and bulletin board on inside of the facility, near the conference room. Day was in the conference room meeting with employees regarding healthcare insurance.

According to Roseberry, when Day saw him, Day pointed at him and then pointed at Keith Purvis, who was standing nearby, and motioned Roseberry over to Purvis. Roseberry then walked over to Purvis. Up to that point, Roseberry had not met

---

[16] On redirect examination, Tolson testified about the posting of these entry-level positions.

> Q. BY MS. MURAROVA: Mr. Tolson, you testified that the practice was not to post entry-level jobs unless someone wanted that job. Is that right?
> A. That's the way that we normally do business because, like I said, clippers out there, they just don't stay very long, you know.
> Q. So have you ever filed a grievance about someone wanting an entry-level job?
> A. No ...

(Tr. 106.)

Purvis, but he had heard that Purvis was responsible for the decertification petition. Purvis asked Roseberry if he had signed anything, any kind of petition. Roseberry responded he had not. Purvis told Roseberry to meet him at his truck after work. That was the end of the interaction. Roseberry also recalled hearing Purvis ask Day if there were any other new employees. (Tr. 144–147.)

According to Day, he has a practice of introducing each new employee to his/her supervisor on his/her first day of work. However, on the day in question, Day was tied up dealing with the changes Respondent had implemented regarding health insurance. Day testified that he had a conversation with Keith Purvis earlier that day and asked Purvis if he would take the new employees over to meet their supervisors, because Day would not have the time to do it. Purvis agreed. Later on, when Day saw Roseberry standing outside the conference room, Day asked him to go with Purvis, with the intent that Purvis would take Roseberry to go and meet his supervisor. Day testified that he did not hear any of the conversation between Roseberry and Purvis, and he did not know that Purvis was going to talk to Roseberry about the decertification petition. (Tr. 162–166.)

In reviewing the evidence, I credit Roseberry and do not credit Day. Roseberry was a neutral employee witness who had a detailed recollection and testified clearly and credibly about what occurred. Day, in contrast, simply was not credible regarding these events. For example, Day testified the sole reason he directed Roseberry over to Purvis was for Purvis to take Roseberry over to meet his supervisor because Day was tied up with meetings and would not be able to take him. Day testified that he had arranged with Purvis ahead of time to do this, and that Purvis agreed. Yet, Roseberry testified that Purvis never took him over to meet his supervisor. Instead, Purvis just asked Roseberry if he had signed any petitions and, when Roseberry said he had not, Purvis told him to meet at Purvis's truck after work. I find it highly improbable that if Day had asked Purvis to take Roseberry over to meet his supervisor and Purvis agreed to do so, that Purvis would not have taken Roseberry over, or, at least, Purvis would have explained to Roseberry why he was not taking him over to meet his new supervisor. Finally, and probably most telling, Respondent called Keith Purvis to testify during its case-in-chief, after Roseberry had testified, and it never questioned Purvis about his exchange with Roseberry, or Day's alleged request for Purvis to take Roseberry over to meet his new supervisor. In fact, Respondent asked Purvis nothing about this. I find Respondent's failure to question Purvis about this matter—or do anything else to corroborate Day's testimony—is a telling omission that undermines Day's credibility regarding his motive for directing Roseberry over to meet with Purvis on the day in question.

V. LEGAL ANALYSIS

A. Respondent Failed to Present Objective Evidence that the Union Lost the Support of a Majority of Unit Employees as of the Date Respondent Withdrew Recognition.

Subparagraphs 8(a) and (b) of the complaint allege that Respondent violated Section 8(a)(5) and (1) of the Act when it withdrew recognition from the Union on March 1. It is well-established that a union is entitled to an irrebuttable presumption of majority status for one year following Board certification and during the term of any collective-bargaining agreement, up to three years. At other times, the presumption is rebuttable. *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 785–787 (1996). In Levitz Furniture, supra, the Board articulated the current standard for how an employer could rebut this presumption and withdraw recognition without a Board election. Prior to Levitz, an employer could withdraw recognition by showing "a good-faith doubt based on objective considerations" that the union continued to enjoy majority support. *Celanese Corp.*, 95 NLRB 664 (1951). However, in Levitz, the Board found this good-faith doubt standard to be inconsistent with the purposes of the Act and held that "an employer may rebut the continuing presumption of an incumbent union's majority status, and unilaterally withdraw recognition, only on a showing that the union has, in fact, lost the support of a majority of the employees in the bargaining unit." *Levitz*, 333 NLRB at 725.[17] In so doing, the Board emphasized that an employer with objective evidence that the union has lost majority support—for example, a petition signed by a majority of the employees in the bargaining unit—withdraws recognition at its peril. Id. If the union contests the withdrawal of recognition in an unfair labor practice proceeding, the employer bears the burden of proving by a preponderance of the evidence that the union had, in fact, lost majority support at the time of the withdrawal of recognition. If the employer fails, it will not have rebutted the presumption of majority status, and its withdrawal of recognition will violate Section 8(a)(5) of the Act. Id.[18]

On December 19, 2016, Respondent received a petition signed by a majority of the employees stating that they did not want to be represented by the Union, and, in January, Respondent received additional signatures supporting this antiunion

[17] In their briefs, Respondent and the General Counsel make divergent arguments for why current Board law on the withdrawal of recognition is flawed and should be changed. I, however, am bound by current Board precedent and leave it to the Board, at its discretion, to consider their arguments on this question.

[18] In *Levitz*, the Board modified the evidentiary standard necessary for an employer to file an RM petition, making it easier. The Board reasoned:

> The Board and the courts have consistently said that Board elections are the preferred method of testing employees' support for unions. And we think that processing RM petitions on a lower showing of good-faith uncertainty will provide a more attractive alternative to unilateral action. By contrast, were we to require employers to demonstrate a higher showing of good-faith belief of lost majority support in order to obtain an RM election, as in *United States Gypsum*, we might encourage some employers instead to withdraw recognition rather than seeking an election. An employer who has enough evidence to establish a good-faith belief, though not necessarily enough to show loss of majority status, may be tempted to withdraw recognition in the hope of being able to make that showing in an unfair labor practice proceeding (and, in any event, ousting the union while the proceeding is pending). Thus, by liberalizing the standard for holding RM elections, we are promoting both employee free choice (by making it easier to ascertain employees' support for unions via Board elections) and stability in collective-bargaining relationships (which remain intact during representation proceedings).

petition.[19] On January 11, Respondent sent the Union a letter about the petition and that it intended to withdraw recognition from the Union once the parties' collective-bargaining agreement expired. Under Board law, the operative date for determining whether there is objective evidence of a lack of majority support is not the date the employer announces its intent to withdraw recognition based on such evidence, but rather the date the employer's withdrawal of recognition becomes effective. See *Levitz*, supra. See also *HQM of Bayside, LLC*, 348 NLRB 758 (2006), enfd, 518 F.3d 256 (4th Cir. 2008), and *Parkwood Developmental Center*, 347 NLRB 974 (2006). In this case, the operative date is March 1, after the parties' agreement expired. *Parkwood Developmental Center*, supra (discussing anticipatory withdrawal of recognition).

With additions and subtractions, there were 295 employees in the unit as of March 1. (Tr. 15) (Jt. Exh. 10). Respondent, therefore, needed to present objective evidence that as of that date a majority (148) of the unit employees demonstrated that they no longer wanted to be represented by the Union. Respondent relies upon the antiunion petition, which contained signatures from 181 unit employees. The General Counsel and the Union contend that the antiunion petition fails to meet Respondent's burden, claiming that 43 of the 181 signatures were invalid because, as of March 1, 15 of the employees who signed the petition no longer worked in the unit, and 28 of the other employees who signed the antiunion petition later signed the prounion petition.[20] The result is Respondent only had valid signatures from 138 employees.

The Board has held that, in considering the evidence of a loss of majority support, the employer cannot rely upon as of the date recognition is withdrawn the signatures of employees who are no longer part of the bargaining unit, or employees who subsequently demonstrated support for the union by signing a prounion petition prior to the date recognition is withdrawn. See *HQM of Bayside, LLC*, supra; *Parkwood Developmental Center*, supra; and *Highlands Regional Medical Center*, 347 NLRB 1404, 1407 (2006). As a result, under current Board law, Respondent cannot rely upon the 15 signatures of employees who left the bargaining unit, or the 28 crossover employees who signed the antiunion petition but later signed the prounion petition prior to March 1. And with the elimination of these signatures, I find that Respondent has failed to meet its burden of proving, through objective evidence, an actual loss of majority support as of the date it withdrew recognition.

In its posthearing brief, Respondent does not dispute that the 15 employees who left the unit prior to March 1 should not be counted. But it does argue that at least 11 of the 28 crossovers should be counted as supporting the antiunion petition. First, Respondent contends they should be counted because the Union failed to notify Respondent regarding the prounion petition, despite Respondent's implied inquiries about such evidence in the correspondence it sent to the Union prior to withdrawing recognition. This argument lacks merit. The Board has held there is no duty under *Levitz Furniture* for a union to provide such evidence to an employer. See *Scomas of Sausalito, LLC*, 362 NLRB 1462 (2015), enforcement denied and order vacated by *Scomas of Sausalito, LLC v. NLRB*, 849 F.3d 1147 (D.C. Cir. 2017) (holding that employer's violation was not so severe as to warrant affirmative bargaining order); *Fremont Medical Center*, 354 NLRB 453, 459–460 (2009), adopted 359 NLRB 452 (2013) (withdrawal of recognition unlawful although union did not inform employer of countervailing evidence of union support); *HQM of Bayside, LLC*, 348 NLRB 758, 759 (2006), enfd., 518 F.3d 256 (4th Cir. 2008) (union has no duty to demonstrate majority support prior to withdrawal of recognition). In overruling *Celanese Corp.*, supra, and holding that an employer may withdraw recognition only on a showing that the union has in fact lost majority support, the Board reaffirmed in Levitz the presumption of continued majority support based on important principles underlying the Act, such as safeguarding industrial stability and fostering employee rights to designate their collective-bargaining representative. *Levitz Furniture*, supra, 333 NLRB at 725. Further, the Board noted that when presented with a petition signed by a majority of employees stating they no longer want the union, an employer need not unilaterally withdraw recognition but may petition the Board for an election based on a lower "uncertainty" standard. Id. at 727. With these safeguards in place, *Levitz* and its progeny do not require a union notify an employer it has gathered evidence to establish continued majority support.

Respondent attempts to distinguish this case from *Levitz, Parkwood Developmental Center,* and *Highlands Regional Medical Center*, by pointing out that in those cases the unions offered to show the employers evidence that there was not a loss of majority support, and the employer withdrew recognition without reviewing that evidence. In this case, Respondent asserts that the Union never informed Respondent that it had such evidence, and, instead, chose to play a game of "gotcha" by keeping its prounion petition a secret. Respondent contends that allowing such conduct is fundamentally unfair and contrary

[19] There is no allegation these signatures were tainted or obtained as result of unfair labor practices.

[20] In *Flying Foods*, 345 NLRB 101, 103 fn. 9 (2005), the Board held, consistent with *Levitz*, that, if the withdrawal is challenged, the ultimate determination requires that the signatures be authenticated. Id. at 103–104. The reason being that a union seeking to obtain a bargaining order after having its support undermined by unfair labor practices is required to establish, generally by authorization cards, that a majority of the employees in the unit signed the card without coercion or any misrepresentation. Signatures may be authenticated by the testimony of the signer, a witness to the signature, delivery to the solicitor of the card, or by handwriting exemplars. The standard is no different when an employer seeks to establish the loss of majority support for an incumbent union. See generally *Ambassador Servs., Inc.*, 358 NLRB 1172 (2012), adopted by *Ambassador Servs., Inc.*, 361 NLRB 939 (2014).

At the hearing, the General Counsel seemed to challenge the method Respondent used to authenticate the signatures on the antiunion petition. But, in its posthearing brief, the only issue the General Counsel raised concerned the names/signatures of Fred Gross, Donnie Butler, and William Woodruff. I have previously addressed those signatures, finding that Gross and Butler should not be counted as supporting the antiunion petition, but Woodruff should. Regardless, even if the General Counsel had contested the authenticity of the signatures, I find Respondent's verification process was reasonable. Moreover, at the hearing, Respondent called the employees who gathered the signatures to further verify their authenticity. Consequently, I find the signatures were properly authenticated.

to the purposes of the Act. This argument lacks merit as well. The Board has placed the burden of proof entirely on the employer when it decides to withdraw recognition to later prove in the event of an unfair labor practice charge that it had objective evidence of actual loss of majority support. *HQM of Bayside, LLC*, supra at 759. In *Levitz*, the Board held that an employer acts at its peril when it relies upon a petition signed by a majority of the unit as the basis for withdrawing recognition. That is particularly true in this case when Respondent relied upon a petition signed by employees up to three months prior to the withdrawal of recognition. Although the signatures on the antiunion petition are not stale, there is a risk of relying upon such signatures because employees' opinions may change in the interim, and there may not be objective evidence of an actual loss of majority of support when recognition as of the date recognition is withdrawn. This uncertainty is why, in *Levitz*, the Board held that "elections are the preferred method of testing employees' support for unions" and why the Board lowered the standard for filing an RM petition. *Levitz*, 333 NLRB at 727. The same rationale holds true for RD petitions and employees who no longer want to be represented by their union.

Respondent also argues that certain of the crossover signatures should still be counted as evidence of the Union's loss of majority support because there was confusion, coercion, and misrepresentations made regarding the prounion petition. This argument lacks merit. I find there is no showing that any of the signatures were obtained by any misrepresentation or coercion. In *DTR Industries*, 311 NLRB 833 (1993), the Board held:

> [W]here as here, the purpose of the card is set forth on its face in unambiguous language, the Board may not, in the absence of misrepresentations, inquire into the subjective motives or understanding of the card signer to determine what the signer intended to do by signing the card.

I find the language on the top of the prounion petition stating that "We the undersigned members of the International Association of Machinists and Aerospace Workers, Local Lodge 619, support the Union at Leggett & Platt, Inc." was unambiguous. Respondent's claims certain employees signed the prounion petition because they were confused or believed that they needed to sign the petition to receive strike benefits or to maintain insurance. (R. Br. 10.) These are largely the same employees who did not read the petition, or do not recall what the petition said, when they signed it. As previously stated, I find Elmer Tolson to be a credible witness, and he denied making any statements that employees needed to sign the prounion petition in order to receive strike benefits or keep their insurance. Some of the witnesses appear to have conflated the purposes of the prounion petition and the sign-in sheet for the strike sanction vote. I do not find that the confusion was the result of any nefarious intent or conduct on the part of the Union. The prounion petition was at one desk, and the sign-in sheet for the strike sanction vote was on a separate desk. There was a union official at the strike sanction vote desk explaining what the sign-in sheet was for and to answer any questions. I fail to see how, under these circumstances, employees were confused or coerced so as to invalidate their signatures on the prounion petition. Respondent also contends that Tolson misrepresented to A. Dwayne Hawkins what would happen if Hawkins did not sign the petition. As previously stated, I do not credit Hawkins' uncorroborated testimony that Tolson threatened that health insurance would double and that Hawkins would lose his job if the Union were gone. Therefore, I find no evidence of coercion or misrepresentation.

Finally, at the hearing, Respondent presented 11 of the crossover employees for the purpose of having them testify that, as of March 1, they did not support the Union. I allowed Respondent to make offers of proof—initially through questions and answers and then through narrative statements by Respondent's counsel—about those 11 employees' subjective views. I then sustained the objections to the introduction of that evidence because, under current Board law, after-acquired evidence about employees' subjective views is irrelevant to deciding whether there is an actual loss of majority support. I reaffirm my rulings. The Board has held that such evidence is irrelevant not only because the *Levitz* standard is objective and Respondent's proffered evidence was subjective, but also because *Levitz* requires that Respondent have that objective evidence at the time it withdraws recognition, not at some later date. See *Highlands Regional Medical Center*, supra at 1407 fn. 17 (2006). See also *Pacific Coast Supply, LLC*, 360 NLRB 538, 543–544 (2014); *RTP Co.*, 334 NLRB 466, 469 (2001), enfd. 315 F.3d 951 (8th Cir. 2003), cert. denied 540 U.S. 811 (2003) ("In analyzing the adequacy of an employer's defense to a withdrawal of recognition allegation, the Board will only examine factors 'actually relied on' by the employer. Conduct of which the employer may have been aware, but on which the employer 'did not base' its decision to withdraw recognition from the Union, is of 'no legal significance.'"). Based on the record, the only evidence Respondent was aware of, as of March 1, that these employees did not support the Union was the antiunion petition. That petition was initially submitted to Respondent on December 19, 2016, and later supplemented with additional signatures in January. The signatures for the prounion petition were gathered January18-February 28. Respondent has presented no evidence that, prior to or as of March 1, any of these crossover signatories objectively reasserted that they no longer wanted the Union after they signed the prounion petition. Respondent, therefore, cannot rely upon the after-acquired evidence of these employees' subjective views to establish an actual loss of majority support as of March 1.

Based on the foregoing, I find that Respondent failed to present objective evidence that, as of March 1, a majority (148 of the 295 unit employees) no longer wanted to be represented by the Union. Respondent, therefore, violated Section 8(a)(5) and (1) of the Act when it withdrew recognition from the Union as of that date, and when it failed to bargain with the Union.

B. Respondent Made Material, Substantial, and Significant Changes to Unit Employees' Wages, Hours, and Other Terms and Conditions of Employment, Without Providing the Union With Notice or an Opportunity to Bargain, in Violation of Section 8(A)(5) and (1) of the Act.

Subparagraph 8(c) of the Complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act when it unilaterally

changed the unit employees' terms and conditions of employment, without bargaining with the Union. Section 8(d) of the Act requires that an employer bargain with a union representing its employees with respect to "wages, hours, and other terms and conditions of employment." An employer has a duty to bargain with the union over changes to these mandatory subjects of bargaining and that its failure to do so violates Section 8(a)(5) and (1) of the Act. *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 679–682 (1981); *NLRB v. Katz*, 369 U.S. 736, 743 (1962). The duty to bargain arises when the changes are ""material, substantial and significant." *Flambeau Airmold Corp.*, 334 NLRB 165, 171 (2001). The parties have stipulated that following Respondent's withdrawal of recognition from the Union on March 1, it unilaterally changed employees' wages, paid personal time, health insurance, vacation, stock bonus plan, 401(k) plan, dental insurance, vision insurance, flexible spending plan, life insurance, short term disability insurance, and long term disability insurance, as described more fully above. The parties further stipulated that these changes were material, substantial, and significant, and they were made without bargaining with the Union. (Jt. Exh. 10). Respondent's sole defense is that it had no obligation to bargain with the Union over any of these changes as of March 1, because it had lawfully withdrawn recognition from the Union as of that date. For the reasons already stated, I find that Respondent lacked the requisite objective evidence of an actual loss of majority support sufficient to withdraw recognition from the Union. I, therefore, find Respondent violated Section 8(a)(5) and (1) of the Act when it unilaterally implemented these changes without bargaining with the Union.

The only dispute is whether Respondent unilaterally changed the job bidding procedure, without bargaining with the Union, in violation of Section 8(a)(5) and (1) of the Act. The Board has held that changes to how jobs are posted, bid, and awarded are mandatory subjects of bargaining. See generally *Beverly Health & Rehabilitation Services*, 335 NLRB 635, 656 (2001); *Southwestern Bell Telephone Co.*, 247 NLRB 171, 173 (1980). The General Counsel has the burden of showing, by a preponderance of the evidence, that the unilateral change at issue constitutes a "material, substantial, and significant" change. *Fremont Medical Center*, 357 NLRB 1899, 1902 (2011). Based upon my review of the evidence, I find that the General Counsel has failed to meet its burden. The General Counsel cites to a few instances in which Respondent allegedly awarded jobs to individuals without complying with the contractual bidding process. Those individuals are Ashley Rogers, Robert Woodward, Kelly Withrow, Robert Ward, George McIntosh, Jacob Purvis, Kenny Grant, and two unidentified individuals. The General Counsel relies almost exclusively upon the testimony of Tolson and Berry as to whether they saw a posting for a particular job on the bulletin board before it was awarded. Although Tolson and Berry testified that they regularly reviewed these bulletin boards, I find that their testimony alone is insufficient evidence to meet the General Counsel's burden of proving by a preponderance of the evidence that the jobs were not, in fact, properly posted or bid. Respondent introduced several examples of jobs that were posted, both before and after March 1. Respondent posted 30 vacancies for bid between mid-March and late June. (R. Exh. 4.) I do not believe that relying upon the recollection of Tolson or Berry as to whether they saw that a job was posted is alone sufficient to prove the alleged unilateral change. The General Counsel could have subpoenaed all the job postings, bids, and notifications as to who was awarded the job to prove (or disprove) whether Respondent complied with the procedure after March 1.

As for Rogers, I credit Denisio's testimony that her position was posted and that she was the successful bidder. As the General Counsel points out, Respondent did not introduce Rogers' bid or award notification. But the initial burden is not for Respondent to prove that it complied with the contractual procedure. It is the General Counsel's burden to prove Respondent did not. And as stated, I do not believe the General Counsel met its burden.

Moreover, I find that in several of these instances the General Counsel did not establish that the alleged failure to post the position at issue constituted a unilateral change. For example, with regards to Ward, McIntosh, Purvis, and Grant, the evidence establishes that these were all temporary transfers. According to Article 9.2 of the parties' agreement, the job bidding procedure applies to a "new or permanently vacated job." (Jt. Exh. 1, p. 14.) Based on Denisio's testimony, these jobs were not considered to be new or *permanently* vacated. They were considered temporary transfers. Article 9 does not require that temporary transfers be posted. The General Counsel argues that Respondent agreed to move Ward because of his medical condition, and Respondent has, in the past, posted positions vacated because of the incumbent employee's medical condition. However, as Denisio testified, Respondent has temporary bids for positions that are temporarily open because the incumbent employee is out on FMLA leave. (Tr. 218–219.) That was not the case in these situations.

Similarly, the General Counsel alleges that Respondent failed to post entry level positions (Woodward, Withrow, and the two unidentified individuals). However, Tolson and Denisio confirmed that these entry-level positions are not normally posted for bidding because there is high turnover and low demand for them. Tolson testified that there have been instances in which Respondent hired or placed someone into one of these entry-level positions, and a unit employee wanted the position because it was on a different, preferable shift. Tolson testified that when the unit employee(s) notified him about the opening, he would go and talk to management and get the unit employee(s) assigned to the job. In other words, according to Tolson, Respondent did not normally post these entry-level positions, but if a unit employee wanted an entry-level position that was not posted for bid, the Union would raise the issue with management, and management would award the job to the senior unit employee. (Tr. 75–76.) The issue, however, is that there is no evidence that the Union went to management after Respondent awarded these entry-level positions after March 1, seeking to have the position assigned to a unit employee. As such, there is no evidence Respondent changed the practice.

Based on the foregoing, I find the General Counsel has not proven by a preponderance of the evidence that Respondent unilaterally changed the contractual procedure or established practice for job bidding. I, therefore, dismiss this particular

allegation.

C. Respondent, Through Day, Directed Roseberry to Purvis to Discuss the Decertification Petition, in Violation of Section 8(A)(1) of the Act.

Subparagraph 7(a) of the Complaint alleges Respondent, through its Human Resource Manager Stephen Day, violated Section 8(a)(1) of the Act when it directed an employee to meet with a fellow employee to sign the decertification petition. An employer violates Section 8(a)(1) of the Act by soliciting, encouraging, promoting, or providing assistance in the initiation, signing, or filing of an employee petition seeking to decertify the bargaining representative. *Wire Products Mfg. Corp.*, 326 NLRB 625, 640 (1998), enfd. sub nom. mem. *NLRB v R.T. Blankenship & Associates, Inc.*, 210 F.3d 375 (7th Cir. 2000). In determining whether an employer's assistance is unlawful, the appropriate inquiry is "whether the Respondent's conduct constitutes more than ministerial aid." *Times Herald*, 253 NLRB 524 (1980). In making that inquiry, the Board considers the circumstances to determine whether "the preparation, circulation, and signing of the petition constituted the free and uncoerced act of the employees concerned." See generally, *Eastern States Optical Co.*, 275 NLRB 371, 372 (1985); *Dentech Corp.*, 294 NLRB 924 (1989) (employer allowed the antiunion employee to solicit signatures for an antiunion petition on company time and to answer employee questions at meetings); *Community Cash Stores*, 238 NLRB 265 (1978) (employer told an employee to go up to the company meeting room where the antiunion employee would give him a statement withdrawing his union authorization card); and *Scherer & Sons, Inc.*, 147 NLRB 1442, 1445–1449 (1964), enfd. per curiam 370 F.2d 12 (5th Cir. 1966), cert. denied 88 S.Ct. 46 (1967) (employer gave antiunion employee unrestricted access to the plant and offices and directed employees to sign her legal complaint against the union's picketing).

I find that Day directed Cordell Roseberry to meet with Keith Purvis for the purpose of having Roseberry sign the decertification petition, and that this amounted to more than ministerial aid. As previously stated, I do not credit Day's testimony that he directed Roseberry over to Purvis so that Purvis could take Roseberry over to meet his supervisor. I find that Day, the human resource manager, directed a new employee—an employee who he had just hired—to go and talk to the known leader of the decertification effort, on company time and on company property, for the purpose of having Purvis talk to Roseberry about the decertification effort and to get him to sign the decertification petition. In light of the foregoing, I find Day's conduct had a reasonable tendency to interfere with, restrain, or coerce the employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1).

CONCLUSIONS OF LAW

1. The Respondent, Leggett & Platt, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, the International Association of Machinists and Aerospace Workers (IAM), AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union has been the exclusive representative for the purposes of collective bargaining of the employees in the following bargaining unit pursuant to 9(a) of the Act:

> The production and maintenance employees at the [Respondent's] New Street and Ecton Road, Winchester, Kentucky plants, including inspectors and shipping and receiving employees. Excluded from recognition under this Agreement are the [Respondent's] over-the-road drivers, office clerical employees, quality auditors, inventory control employees, parts room attendants, guards, professional employees, and supervisors as defined in the Act.

4. Respondent violated Section 8(a)(1) and (5) of the Act by withdrawing recognition from and refusing to bargain with the Union on March 1, 2017, and continuing to date, as the exclusive collective-bargaining representative of the contractual bargaining unit.

5. Respondent violated Section 8(a)(1) and (5) of the Act by making the following changes to bargaining unit employees' terms and conditions of employment effective March 1, 2017, without affording the Union an opportunity to bargain:

(1) wages
(2) paid personal time
(3) health insurance
(4) vacation
(5) stock bonus plan
(6) 401(k) plan
(7) dental insurance
(8) vision insurance
(9) flexible spending plan
(10) life insurance
(11) short term disability insurance
(12) long term disability insurance

6. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

7. The Respondent did not violate the Act in any other manner alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, the Respondent shall be ordered to cease and desist from engaging in such conduct and take certain affirmative action designed to effectuate the policies of the Act. Most importantly, in order to restore the status quo ante, in light of Respondent's withdrawal of recognition and refusal to bargain with the Union, Respondent must recognize and bargain with the Union for a reasonable period of time as the bargaining representative of unit employees.

The Respondent must bargain on request with the Union as the exclusive collective-bargaining representative of employees in the appropriate bargaining unit and embody any understanding reached in a signed agreement. The Respondent is required to meet to negotiate with the Union at reasonable times and reasonable places.

The restoration of the status quo ante requires that the Respondent must, on request from the Union, continue the terms

and conditions of employment until changed through collective bargaining with the Union. In accord with Board practice and equitable considerations, the recommended Order will not require the rescission of the unlawful wage increases, absent a request from the Union. The Respondent shall post an appropriate informational notice, as described in the attached appendix. The General Counsel requests that, in addition, the Respondent be required to read the notices to employees at an all employee meeting. This remedy is atypical and generally ordered in situations when there is a showing that the Board's traditional notice remedies are insufficient, such as when a respondent is a recidivist violator of the Act, when unfair labor practices are multiple and pervasive, or when circumstances exist that suggest employees will not understand or will not be appropriately informed by a notice posting. Here, the violations are serious, but I do not find circumstances to warrant a notice reading remedy.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[21]

ORDER[22]

Respondent, Leggett & Platt, Inc., its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Withdrawing recognition from the International Association of Machinists and Aerospace Workers (IAM) District Lodge No. 619, AFL–CIO (Union), and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of unit employees.

(b) Undermining the Union and interfering with employee free choice by directing employees to meet with another employee for the purpose of obtaining employees signatures on a petition to decertify or repudiate the Union.

(c) Making changes to bargaining unit employees' terms and conditions of employment in effect March 1, 2017, without affording the Union prior notice and a meaningful opportunity to bargain.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative actions necessary to effectuate the policies of the Act.

> Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the following appropriate unit employees concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:
>
> The Company's production and maintenance employees at the Company's New Street and Ecton Road, Winchester, Kentucky plants, including inspectors and shipping and receiving employees. Excluded from recognition under this Agreement are the Company's over-the-road drivers, office clerical employees, quality auditors, inventory control employees, parts room attendants, guards, professional employees, and supervisors as defined in the Act.

(b) On request of the Union, adhere to the terms and conditions set out in the expired collective-bargaining agreement honored through February 28, 2017, giving effect to its terms retroactive to March 1, 2017, and continuing those terms and conditions in effect unless and until changed through collective bargaining with the Union.

(c) Make unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's repudiation of the collective-bargaining relationship.

(d) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay to the appropriate calendar quarters.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days of service by the Region, post at its Winchester, Kentucky facilities copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director of Region 9, after being signed by Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2017.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 9 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. October 2, 2017.

---

[21] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[22] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT fail or refuse to bargain in good faith with the International Association of Machinists and Aerospace Workers (IAM), AFL–CIO as exclusive representative for the purposes of collective bargaining of the employees in the following bargaining unit pursuant to 9(a) of the Act

> The production and maintenance employees at the [Respondent's] New Street and Ecton Road, Winchester, Kentucky plants, including inspectors and shipping and receiving employees. Excluded from recognition under this Agreement are the [Respondent's] over-the-road drivers, office clerical employees, quality auditors, inventory control employees, parts room attendants, guards, professional employees, and supervisors as defined in the Act.

WE WILL NOT withdraw recognition from the Union or refuse to recognize and bargain with the Union as your bargaining representative in the absence of a Board election or absent proof of an actual loss of majority support of the bargaining unit employees at the time recognition is withdrawn.

WE WILL NOT make changes in wages, hours, and other terms and conditions of employment, including, but not limited to, employees' wages, paid personal time, health insurance, vacation, stock bonus plan, 401(k) plan, dental insurance, vision insurance, flexible spending plan, life insurance, short and long term disability insurance, without reaching an overall good faith impasse.

WE WILL NOT tell you to meet with other employees to sign a petition to decertify the Union.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of your rights under Section 7 of the Act.

WE WILL recognize and bargain with the Union as your representative concerning wages, hours and other terms and conditions of employment, and, If an agreement is reached with the Union, we will sign a document containing that agreement.

WE WILL if requested by the Union, rescind any or all changes to your terms and conditions of employment that we made without bargaining with the Union.

WE WILL pay you for the wages and other benefits lost because of the unilateral changes to terms and conditions of employment that we made without bargaining with the Union.

LEGGETT & PLATT, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/09-CA-194057 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.